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CONTENTS

Serbia

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Introduction

It took a while for Serbia to enact *lex specialis* governing exclusively the subject matter of arbitration. The Serbian Arbitration Law came into force on 10 June 2006.[1] Prior to this, the subject matter dealing with arbitration was covered by a single chapter of the then-in-force Law on Civil Procedure. Needless to say, before the Arbitration Law the regulation of arbitration was pretty scarce, therefore the adoption of the Arbitration Law represents a significant improvement as, for the first time, the subject matter of arbitration has been regulated in a comprehensive manner.

Earlier lack of detailed regulation, however, did not prevent Serbian parties from agreeing arbitration *fora* in their agreements with international partners long before the enactment of the Arbitration Law. Most probably due to lack of confidence in Serbian courts, agreements with foreign investors such as those on business cooperation or investment in Serbia commonly contained arbitration clauses, as international arbitration was allowed for disputes having an international element. Another reason for such a trend was that the Socialist Federative Republic of Yugoslavia ("SFRY") ratified the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards (hereinafter the "New York Convention") in 1981 and Serbia became a member state to this Convention on the basis of succession, as of 2001. Reservations set by SFRY, i.e. a reciprocity reservation, commercial reservations and retroactive application reservation of the Convention *de facto* became irrelevant as the Arbitration Law does not foresee any such conditions for recognition and enforcement of foreign arbitral awards.

The provisions of the Arbitration Law pertain only to arbitration and arbitral procedure when the place of arbitration is Serbia. Like in majority jurisdictions, this law is based on the UNCITRAL model law, however with some differences. The major difference is that the Arbitration Law is applicable to both international and domestic arbitration. Another novelty introduced by the Arbitration Law is that, subject to arbitrability of the dispute, international arbitration is now also allowed between two domestic parties. Among the other differences from the UNCITRAL Model Law are additional conditions for annulment of the arbitral award, lack of provisions on termination of the arbitral proceedings, etc.

The only arbitral institution competent for adjudicating international arbitration disputes in Serbia is the Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce (hereinafter referred to as **"Court of Arbitration"**), the seat of which is in Belgrade. According to their statistics this institution has resolved a total of 44 cases over the last three years. There is also the Permanent Court of Arbitration attached to the Serbian Chamber of Commerce which is competent to resolve domestic arbitration disputes only.

Despite being more comfortable to adhere the dispute to one of the institutional centres either in Serbia or foreign institutions such as ICC, VIAC or SCAI, we have seen lately more arbitration clauses agreeing *ad hoc* arbitration under UNCITRAL Rules. Naturally, for large investments, infrastructure transactions and those involving investment in the public sector, foreign institutional arbitrations are always the choice. On the other hand, the parties in smaller and private transactions tend to be more cost-conscious and an *ad hoc* arbitration can offer better management of their time. Despite being extremely inefficient and often lacking credibility, Serbian courts are still the forum for disputes between two domestic entities. For now, Serbians are reluctant to adhere the dispute to arbitrators, either domestic or foreign.

Arbitration agreement

By an arbitration agreement, parties submit to arbitration their future disputes or disputes which have arisen from a defined legal relationship. Such an agreement to arbitrate may be either contained as a clause of the relevant contract as an arbitration clause or it may be concluded as a separate contract. The main requirement of the Arbitration Law is that the arbitration agreement must be in writing. However, an arbitration may sustain a lack of initial arbitration agreement if the defendant explicitly accepts the arbitration upon receiving the initiation of arbitration by a claimant. Explicit acceptance includes either written acceptance, or acceptance dictated to the hearing minutes, or even an implied conduct by failing to object to lack of an arbitration agreement or contest the jurisdiction of the arbitration court but actively participating in the arbitration proceedings.[2] The content of the arbitration agreement is not explicitly prescribed, however its definition requires written consent of the parties to arbitration and definition of the scope of the legal relationship.

Apart from a prescribed form, the Law provides for nullity of the arbitration agreement in case the dispute itself is not arbitrable. When parties lack capacities or there is a deficiency of free will to enter into an arbitration agreement, the arbitration agreement shall also be considered null and void.[3] Arbitrability of the dispute under Serbian law implies that a dispute must be related to rights of which the parties may freely dispose, and the subject matter must not be in the exclusive jurisdiction of the Serbian courts.

Arbitration agreement and Serbian courts

The fact that an arbitration agreement exists covering a specific legal relationship is a ground for rejection of the claim brought before a court upon an objection of a sued party, submitted prior to engagement in the discussion of the subject matter of the dispute. The court is obliged to dismiss such a claim for lack of jurisdiction, unless it finds that the agreement is manifestly null and void, inoperative or incapable of being performed.[4] It is however important that the motion to dismiss on the grounds of valid arbitration agreement is raised prior to engaging in the subject matter of the dispute, otherwise a later challenge of the court jurisdiction will be rejected by the court. In practice, Serbian courts also apply this rule *mutatis mutandis* in enforcement proceedings, where an enforceable instrument such as an invoice is presented to the court for direct enforcement. Namely, instead of starting arbitration, the party to the arbitration agreement may decide to initiate enforcement proceedings based on directly enforceable instruments. If the court grants motion for enforcement, a debtor has a right to file an objection against the court's decision and to challenge the court's jurisdiction on the grounds of the valid arbitration agreement. In such a case the court will transfer further resolution of the matter to arbitration. If the court grants the objection and the debtor fails to contest the court jurisdiction in its objection, the

case will be transferred to litigation. The debtor's later challenge of the jurisdiction will be rejected by the court.

In 2012, the Appellate Commercial Court declared in two different cases[5] that the objection against enforcement decision represented the debtor's entering into the dispute. In both cases the courts granted motions for enforcement to the parties with a valid arbitration agreement covering the dispute. The opposing parties contested the decision on enforcement by their objections, but failed to challenge the court jurisdiction due to existing arbitration agreements. The courts granted these objections and transferred the cases to litigation proceedings. In the course of the litigation proceedings both opposing parties' objections challenging jurisdiction of the court were rejected, as the courts considered the objections impermissible for failing to challenge the court jurisdiction in the initial objection against the enforcement decision.

Arbitration procedure

The Arbitration Law governs the arbitration proceedings in a general manner. The parties are free to agree on the rules on procedures, or to refer to specific rules. Nevertheless, the Law prescribes two principles that must be fulfilled. Those are the equality of the parties in the arbitral procedure, and that arbitral tribunal must ensure that each party's case and evidence are presented as well as the right to respond to the allegations of the other side.[6]

The arbitration proceedings before the Court of Arbitration are regulated by the Rules of the Foreign Trade Court of Arbitration of the Chamber of Commerce and Industry of Serbia[7] (hereinafter referred to as "**Rules**"). The proceedings before the Court of Arbitration may also be organised in accordance with the UNCITRAL Arbitration Rules, which has been rarer in practice. UNCITRAL Arbitration Rules are most commonly used in Serbia when an *ad hoc* arbitration is agreed.

Under the Arbitration Law, the arbitration proceedings commence when a permanent arbitration court receives a request for arbitration or a statement of claim. As for an *ad hoc* arbitration, the arbitration proceedings will start on the day the respondent receives the request for arbitration or the statement of claim.[8] As these are not mandatory provisions, the parties to the arbitration agreement may define the start of the arbitration proceedings in another manner.

The parties to an arbitration agreement are free to agree a place of arbitration. In the event there is no agreement on the place of arbitration, the arbitration court determines the place of arbitration. The arbitration court may, unless otherwise agreed by the parties, decide to meet at any place in order to, *inter alia* hear the witnesses, expert witnesses, inspect documents, etc.[9]

Only basic rules are given regarding the rules on evidence. The arbitration court is entitled to determine the admissibility, relevance and weight of any evidence. It is clear that an arbitration court may decide to dismiss proposed evidence. In the absence of the parties' agreement, the arbitration court decides whether to hold a hearing or to render a decision on the basis of documents. However, if one party requests a hearing, the arbitration court has to grant such a request. The parties to the proceedings may agree to exclude hearings.

The witnesses in the arbitral proceedings may testify at a hearing or outside the hearing if witnesses agree and parties do not object. The witness may not be subject to procedural measures or penalties like in the litigation proceedings, and he/she does not take an oath. The arbitration court does not warn the witness to tell the truth, but a false testimony may result in the annulment of the final award under point 5 of Article 60 of the Arbitration Law.[10]

As for the expert witnesses, the parties may agree on rules regarding this matter. Lack of such agreement may entitle the arbitration court to appoint an expert witness. The parties are entitled to pose questions to the expert witness at a hearing, or to engage experts who will discuss the matter in dispute with the appointed expert.[11]

The arbitration court may ask a state court for assistance regarding taking evidence.[12]

On the other hand, the Rules favour arbitration proceedings without hearings. If neither party requests a hearing and the Court of Arbitration determines that submissions and produced documents are sufficient, it shall make an award without the hearing. The parties may jointly request the Court of Arbitration to make the award without the hearing. However, the hearing shall be held when one of the parties requests so.[13] Unlike the Arbitration Law, the Rules clearly prescribe that evidence should be taken at the parties' request, but also on the arbitrator's respective tribunal's initiative. The Court of Arbitration may order presentation of evidence until the end of the proceedings.[14] As for the witnesses and the expert witnesses, the Rules are substantially in line with the Arbitration Law.

The Law and the Rules do not contain specific provisions regarding privilege and disclosure of documents. The provisions regarding this matter may be found in various sections of the Arbitration Law and the Rules. The arbitration court may order the parties to provide the expert witness with all necessary information, documents, etc. According to the Rules, the parties are bound to cooperate in taking evidence and to comply with all measures in that respect. As has been already noted, the parties may agree on the rules of the procedure, and therefore on the rules regarding privilege and disclosure. Consequently, the parties may choose International Bar Association Rules on Taking Evidence in International Arbitration.

There are no guidelines for counsels. The domestic counsels, who are attorneys at law, have to comply with the law which regulates their profession and follow the ethical rules of their chamber.

The Law is silent regarding confidentiality of the proceedings, whilst the Rules provide that hearings are closed to the public.[15] Of course, the parties may agree otherwise. In practice, the awards and the award details are unavailable to the public. This implies that the arbitration proceedings are confidential. According to the Rules, the awards may be published entirely only upon the consent of parties.[16] The Board of the Court of Arbitration may allow the awards to be published in professional and scientific publications, without details which may affect the interests of the parties involved.

Arbitrators

The number of arbitrators is determined by the parties. The dispute may be decided by a sole arbitrator or an arbitral tribunal with three or more arbitrators, but in any case an odd number of arbitrators has to be foreseen. In case parties fail to determine the number of arbitrators, it shall be determined by a person or institution entrusted to be an appointing authority. Failing such a designation of an appointing authority or to the rules of an institution, the number of arbitrators shall be defined by the court as a default appointing authority.[17] The parties are also free to agree on procedure for the appointment of arbitrator. In the absence of such agreement the Law has prescribed a fall-back mechanism. In both cases, either with a sole arbitrator or an arbitral tribunal, the deadline for appointment is set to 30 days following the invitation extended to the other party by the initiating party. Failing to respond to such invitation, the arbitrator/s are to be appointed by a designated appointed authority and, in the absence of a determined or determinable appointing authority, the arbitrator/s will be appointed by the competent court.[18]

Any individual with legal capacity may be an arbitrator irrespective of their citizenship, except a person sentenced to imprisonment, as long as the legal consequences of that sentence last. However, the arbitrator must be impartial and independent as well as possessing other qualities defined by the parties.[19]

An arbitrator may be challenged only on two grounds. Firstly, if there is a fact raising justifiable doubt to his/her impartiality and independence or, secondly, if thearbitrator lacks the qualities agreed upon by the parties.[20] The parties can freely regulate or refer to the rules on the challenge. Reference to the institutional arbitration rules implies the application of the challenge under such rules. In the absence of any such agreement or reference to the specific institutional or other rules, the default provisions of the Arbitration Law give this authority to the competent court.[21] An arbitrator may also resign by a written statement or be revoked by the parties for real or legal reasons preventing him/her to conduct the entrusted role.[22]

Interim relief

When it comes to efficiency and the success of the arbitration proceedings the interim measures are of great importance as, during the arbitration proceedings, the subject of the dispute may be alienated or transferred, which finally results in preventing the creditor from executing an arbitration award brought in his favour.

Until adoption of the Arbitration Law only state courts were empowered to grant interim measures, i.e. the arbitrations based in Serbia did not have such authority. Nowadays, the parties can apply to both courts and arbitral tribunals requesting interim measures. However, considering that the arbitration still lacks enforcement mechanisms compared to the court proceedings, there are certain differences regarding the type of interim measures that may be granted within these two proceedings, as well as the enforceability of such measures.

Interim measures issued by the court

As one of the manners of assisting the arbitration proceedings, the courts are entitled to issue interim measures. Each party is entitled, before the commencement of the arbitral proceedings or during the course of such proceedings, to request interim measures from the court and the court is further empowered to grant the requested measure. This provision applies even when the place of the arbitration is in another state, i.e. when the arbitration agreement refers to arbitration located outside of Serbia.[23]

As the Arbitration Law is quiet regarding the form and content of the interim measures that may be issued by courts, the power of the courts shall be constrained by general provisions of the Law on Enforcement and Security[24] regulating the matter of interim measures, while the courts would be entitled to order the requested interim measures only if they find that the conditions prescribed in that law have been met.

Considering that the Law on Enforcement and Security provides a non-exhaustive list of possible interim measures, directed at protecting a monetary claim[25] and a non-monetary claim,[26] the courts possess a wide range of discretion and may grant any type of interim measure they find appropriate. However, an interim measure may be granted by the court, if the requesting party shows to the court: (i) the probability of the existence of its claim; and (ii) the risk that without issuing the requested interim measure, the other party would prevent or considerably aggravate satisfaction of the claim by disposing of, hiding or otherwise making unavailable its property or means. When it comes to the interim measures directed at protecting a non-monetary claim, such measures may be additionally

granted if the requesting party shows to the court the probability that the particular temporary measure is necessary to prevent use of force or infliction of irreparable damage.

Irrespective of the previously mentioned conditions for granting of the interim measures, the Law on Enforcement and Security allows the court, at its own discretion, to grant the requested interim measure, in case the requesting party within a set deadline deposits an amount determined by the court as a guarantee for damages that such measure may cause to the other party.

Decision by which an interim measure is granted has the legal effect of the final and binding decision on enforcement and may be further enforced either by the court or by the private enforcer. Such decision prescribes a duration of the granted interim measure and, if the party requested an interim measure before commencement of the arbitral proceedings, the deadline in which such proceedings must be initiated. In case the requesting party does not initiate arbitration proceedings within the prescribed deadline, or the period for which the interim measure is granted, elapses, the court shall, based on the request of the other party, suspend the proceedings and revoke the performed actions.

The imposed interim measures might also refer to the third parties and not only to the parties participating in the arbitral proceedings.

One of the disputable matters raised in practice was the issue of the (territorial) competence of the court which is authorised to decide on the interim measure related to arbitration proceedings which is being conducted or shall be conducted outside of Serbia. The dilemma was caused by the courts' intention to strictly interpret the provisions of the Law on Enforcement and Security, which stipulates that the court competent to issue the interim measures requested prior to initiation of the court proceedings is the court which has jurisdiction to decide on the merits of the case in the first instance, while in cases where such measure is requested simultaneously or upon initiation of the court proceedings, the competent for deciding shall be the court which is deciding on the merits of the case.[27] It was noticed that the courts in the past,[28] as well as the courts of the lower instance,[29] rejected deciding on the proposal for interim measures simply because the parties agreed the arbitration outside of Serbia. However, in recent practice, the Commercial Court of Appeal took the stand that it is within the competence of the Serbian court to decide on the temporary measure when the arbitration agreement relates to arbitration situated outside of Serbia,[30] which is in line with the explicit provision of the Law.

Interim measures issued by the arbitral tribunal

Since the year 2006, in addition to the courts, arbitral tribunals have been empowered to grant interim measures. Namely, according to the Law, unless otherwise agreed by the parties and upon request of a party, the arbitral tribunal may order any interim measure that it deems appropriate considering the subject-matter of the case and may, at the same time, order the other party to give appropriate security. The Arbitration Law does not specify the kind of interim measures arbitrators may grant. There is not sufficient practice on the arbitral provisional relief to conclude on the types of available measures.[31]

Compared to the scope of the court's temporary measures, temporary measures that may be granted by the arbitral tribunal are quite narrow, and may refer (only) to the subject-matter of the dispute. However, unlike the UNCITRAL Model Law, which was the model for adopting the Law, the imposed interim measures may also refer to third parties, and not only to the parties participating in the arbitral proceedings.

Neither the Arbitration Law nor the Rules provide a closed list of admissible types of

interim measures that may be granted by the arbitral tribunal. Although the Law uses the same terminology as for the measures granted in the court proceedings – interim measures (*In Serbian: privremene mere*) – the case law took the unique stand that the form and content of such measures are not constrained by the Law on Enforcement and Security. Thus, it could be concluded that the arbitral tribunals are entitled to grant any kind of measure that they deem appropriate in each particular case. Accordingly, nothing prevents arbitrators from ordering interim measures similar to the ones provided by UNCITRAL Model Law.[32]

The Law does not regulate the manner in which an interim measure issued by arbitral tribunal may be enforced by the competent court, i.e. does not provide any mechanism which would allow the arbitral tribunal to request assistance of the courts in enforcing interim measures adopted by the tribunal, which obviously caused the problems in practice. It is, however, expected that the latest version of the Rules adopted in 2014 will contribute to the effectiveness of the interim measures adopted by the arbitral tribunal. Namely, these rules stipulate that the interim measures may be ordered by the arbitral tribunal in the form of a conclusion or an arbitration award.[33] Thus, for the interim measure adopted in the form of an arbitration award, there is no doubt that the same could be enforced by the courts on a regular basis.[34] Contrary to that, if the interim measure is granted in the form of a conclusion, it will depend on the party whether it will perform such measure voluntarily or not. In case the party concerned fails to voluntarily comply with the conclusion on the interim measure, the arbitral tribunal does not possess any enforcement mechanism for such party to perform the ordered measure. Case law is also lacking in this respect.

Security for costs

The Law on Arbitration does not explicitly give arbitral tribunals the possibility to order security for costs. However, considering that contrary to the court proceedings, the costs of the arbitral proceedings to be conducted before the Court of Arbitration shall be paid by a claimant, in full and in advance,[35] in the arbitration practice of this arbitral tribunal, requests for security costs are regularly rejected.[36]

Arbitration award

The arbitration award is final and may not be appealed under the Law. The award must be in writing and signed by the arbitrators or sole arbitrator, after deliberation in which all arbitrators must participate, unless otherwise agreed by the parties. The award shall be valid if the majority of arbitrators sign it and note the refusal of signature on the award. The arbitrator who disagrees with the award may write a dissenting opinion.[37]

The mandatory elements of an award are an introduction, a ruling on the dispute and on the costs of arbitration. It usually contains the statement of reasons if not excluded by an explicit agreement of the parties. The date and place of its making also must be stated in the award.[38] In contrast to the Arbitration Law, the Rules regulate the content of each element of the award in a detailed manner.

The Arbitration Law does not stipulate a time frame for making of an award. The Rules, however, stipulate that the Court of Arbitration has to render the award within 60 days after the last non-public meeting of the arbitral tribunal.[39]

An arbitration court may order costs to the parties. The Law only provides that the parties bear the costs of the proceedings. The Rules provide a structure of the costs of the proceedings. In practice, the unsuccessful party should pay to the successful party costs of arbitration proceedings.

Challenge of the arbitration award

The Law does not provide the possibility of appeal against an award. Domestic arbitral award may be set aside by Serbian courts. The Law prescribes the grounds for annulment of the award. The parties may not waive their right to challenge the award in advance. The award may be annulled only on the following grounds:[40]

"*1) the arbitration agreement is not valid under the law determined by the parties' agreement or under the Serbian law unless the parties agreed otherwise;*

2) the party against whom the arbitral award was made was not properly notified on the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;

3) the award deals with a dispute not falling within the scope of the arbitration agreement or contains decisions on matters beyond the scope of the agreement. If it is found that the part of the award going beyond the scope of the arbitration agreement may be separated from the remaining part of the award, only that part of the award may be annulled;

4) the composition of the arbitration court or the arbitration proceedings was not in accordance with the arbitration agreement or with the rules of the permanent arbitral institution which was entrusted with the administration of the arbitration, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, the composition of arbitral tribunal or arbitration proceedings was not in accordance with the provisions of the Law;

5) the award was grounded on a false statement of a witness or expert or on a forged document or the award results from a criminal act of an arbitrator or a party, if these grounds are proven by a final judgment."

The award shall be also annulled if: 1) *the subject matter of the dispute is not arbitrable under the laws of Serbia; or* 2) e*ffects of the award are contrary to the public policy of Serbia.*

The Serbian courts tend to interpret the concept of public policy in a quite restrictive manner. Namely, the Supreme Court of Cassation in 2011[41] and the Appellate Commercial Court in 2014[42] declared their position on this matter. Both courts pointed out that violation of the Serbian mandatory provisions contained in the awards does not necessarily produce effects contrary to public policy.

The court deciding on annulment may suspend the proceedings at the request of a party in order to give the arbitral court an opportunity to eliminate the grounds for annulment.[43]

Enforcement of the arbitration award

Being a signatory of the New York Convention, Serbia honours the necessary requirements for recognition and enforcement of arbitral awards adopted on the territory of any of the signatories of this convention to be enforced on the territory of another signatory. This area is also governed under the Arbitration Law and the Serbian legislation dealing with conflicts[44] of laws, especially in the matter of recognition and enforcement of arbitration awards adopted on the territory of the non-signatories of the New York Convention.

In general, the Serbian legal system provides two pathways for the enforcement of foreign arbitral awards. Depending on the individual case and objectives, the claimant may opt between enforcement proceedings upon the recognition of a foreign arbitral award through an extrajudicial procedure, or direct initiation of the enforcement proceedings where the

recognition of a foreign arbitral award would appear as a preliminary question before a final enforcement decision is made. The advantage of two independent proceedings (firstly recognition and subsequently enforcement proceedings) is that once an arbitral award is recognised, it attains equal status as a domestic, Serbian final court judgment. In other words, it has effect towards *erga omnes* and can be enforced in as many enforcement proceedings as necessary to recover the entire amount of the claim, without repeating recognition proceedings. However, the main disadvantage of conducting two separate proceedings (firstly recognition and subsequently enforcement proceedings) is that the recognition proceedings can take a significant amount of time if the appeal is lodged. On the other hand, recognition of the foreign arbitral award as a preliminary question directly in the enforcement procedure can be faster than in the independent proceedings, but in such a case, the recognition is effective only in such enforcement proceedings. In other words, if the claimant does not manage to enforce the entire claim in one enforcement proceedings, it would have to go through the recognition process again.

Each arbitral award must meet strictly prescribed procedural preconditions in order to be recognised in Serbia. Serbian courts are only allowed to decide on (*ex officio* or upon the other party's request) whether formal requirements for the recognition provided by the relevant legislation are fulfilled and they are therefore not allowed to review and/or decide on the merits of the case. The competent court will *ex officio* refuse the recognition of the foreign arbitration award, if the subject matter of the dispute is not arbitrable under the Serbian law, or if the recognition or enforcement of the award would be contrary to the public policy of the Republic of Serbia. The competent court will, *at the request of the party against whom it is invoked*, refuse the recognition of the foreign arbitration award, if that party furnishes to the competent authority before which the recognition and enforcement is sought, proof that one of the exhaustively prescribed preconditions for recognition has not been met.

Once the foreign arbitral award is recognised, it receives equal status as a Serbian arbitral award, i.e. Serbian court decision, and such decision can be subject to enforcement through the regular enforcement proceeding before the competent court in Serbia. The enforcement proceedings are quite urgent and simple. According to the Serbian Law on Enforcement and Security, the court is supposed to decide upon the motion for enforcement based on the recognised arbitral award within five working days as of the submission of the motion, and to submit its decision to both parties within the subsequent five working days. In practice the decision is rarely reached within this time period, but the enforcement procedure is quite urgent nonetheless. A decision on enforcement may be appealed to the second instance panel of judges of the enforcement court within five working days of receipt of such decision, but such appeal shall not stall the enforceability of the first instance decision on enforcement.

Investment arbitration

Serbia constantly reassures potential foreign investors by concluding comprehensive Bilateral Investment Treaties ("BITs"), providing unconditional guarantees for fair and equitable treatment, full protection and security and a guarantee against arbitrary and discriminatory treatment, for every foreign investment in Serbia. At the moment Serbia has concluded 54 BITs, of which 48 are currently in force, two have been terminated, and four are still to come into force.[45] In addition, Serbia is also a party to the ICSID Convention[46] and European Energy Charter, giving us the status of an Observer to the Energy Charter Conference.[47]

According to the ICSID cases database,[48] Serbian BITs have been subject to four arbitration proceedings in total, of which two are concluded and two are still pending. One of those two is case *Zelena N.V. and Energo-Zelena d.o.o Inđija v. Republic of Serbia,* where these two bio waste management companies were unable to perform their business due to Serbia's alleged failure to enforce legislation on the handling of hazardous animal by-products equally among Zelena N.V. and its competitors, making the claimant's operation of an animal-rendering facility unviable. The requested amount of compensation by the companies remains confidential.

Additionally, besides the above-mentioned case, which is conducted under the ICSID rules, at the moment there is one more arbitration procedure pending − *Mytilineos Holdings v. Republic of Serbia* – but this is being conducted under the UNCITRAL rules.[49] Greek mining and metallurgy giant Mytilineos Holdings concluded several agreements with RTB-BOR, a socially-owned Serbian company, regarding cooperation in the mineral extraction and metallurgy business operated by RTB-BOR and, due to Serbia's alleged failure to honour a commitment undertaken by those agreements, Mytilineos Holdings filed a lawsuit against the Republic of Serbia requesting US$ 100m as the amount of compensation. The claimant states that Serbia failed to comply with the arranged deadline to privatise the mining company RTB-BOR, making it impossible for the claimant to recover outstanding payments from the Government. The procedure held before the Permanent Court of Arbitration is still pending.

* * *

Endnotes

1. Arbitration Law (Zakon o Arbitraži , "Službeni glasnik RS", No. 46/2006).
2. Article 12 of the Arbitration Law.
3. Article 10 of the Arbitration Law.
4. Article 14 of the Arbitration Law.
5. Decisions of the Appellate Commercial Court Pž. 1013/2011 as of 18 January 2012 and Pž. 3224/2012 as of 22 November 2012.
6. Article 33 of the Arbitration Law.
7. The Rules of the Foreign Trade Court of Arbitration of the Chamber of Commerce and Industry of Serbia (*Pravilnik o Spoljnotrgovinskoj arbitraži pri privrednoj komori Srbije*, "Službeni glasnik RS", No. 2/2014), came into force on 18 January 2014.
8. Article 38 of the Arbitration Law.
9. Article 34 of the Arbitration Law.
10. Article 44 of the Arbitration Law.
11. Article 45 of the Arbitration Law.
12. Article 46 of the Arbitration Law.
13. Article 32 of the Rules.
14. Article 36 of the Rules.
15. Article 34 of the Rules.
16. Article 48 of the Rules.
17. Article 16 of the Arbitration Law.
18. Article 17 of the Arbitration Law.

19. Article 19 of the Arbitration Law.
20. Article 23 of the Arbitration Law.
21. Article 24 of the Arbitration Law.
22. Article 25 of the Arbitration Law.
23. Article 15 of the Arbitration Law.
24. The Law on Enforcement and Security ("*Official Gazette of the Republic of Serbia", nos. 31/2011, 99/2011 – other law, 109/2013 – CC decision, 55/2014 and 139/2014*) entered into force on 17 May 2011 and will be applicable until 30 June 2016, when the new law is coming into force.
25. Article 294 of the Law on Enforcement and Security.
26. Article 297, *ibid*.
27. Paragraphs 2 and 3, Article 297, *ibid*.
28. Decision of the Higher Commercial Court, Iž-1217/07 as of 23 May 2007.
29. Decision of the Commercial Court repealed by the decision of the Commercial Court of Appeal, Pž. 7679/2012 as of 23 August 2012.
30. Decision of the Commercial Court of Appeal, Pž. 7679/2012 as of 23 August 2012.
31. Article 31 of the Arbitration Law.
32. Article 17 of the UNCITRAL Model Law.
33. Article 40, paragraph 2 of the Rules of the Foreign Trade Arbitration of the Chamber of Commerce of Serbia.
34. Arbitration award on the interim measure has the legal force and effect of the final and binding court decision.
35. Article 54 of the Rules of the Foreign Trade Arbitration of the Chamber of Commerce of Serbia.
36. World Arbitration Reporter, Second Edition, JurisNet, LLC 2010 www.jurispub.com, Chapter for Serbia, Vladimir Pavić, page 24.
37. Article 51 of the Arbitration Law.
38. Article 53 of the Arbitration Law.
39. Article 46 of the Rules of the Foreign Trade Arbitration of the Chamber of Commerce of Serbia.
40. Article 58 of the Arbitration Law.
41. Decision of the Supreme Court of Cassation Prev. 483/10 as of 8 December 2011.
42. Judgment of the Appellate Commercial Court Pž. 2765/2013 as of 23 January 2014.
43. Article 60 of the Arbitration Law.
44. Law on Resolving Conflict of Laws with the Laws of other Countries (Zakon o rešavanju sukoba zakona za propisima drugih zemalja – published in the "Official Gazette SFRJ", br. 43/82 i 72/82 "Official Gazette of SRJ", br. 46/96 i "Official Gazette of RS", br. 46/2006).
45. http://investmentpolicyhub.unctad.org/.
46. Serbia has signatory of the ISCID convention since 9 May 2007 and it has entered into force in Serbia on 8 June 2007.
47. Serbia signed the International Energy Charger on 20 May 2015.
48. https://icsid.worldbank.org/.
49. http://investmentpolicyhub.unctad.org/.

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